COR/2017/06106

December 8, 2017

s. 40(1)

Dear [Redacted]

s. 40(1)

Re: Your request for access to information under Part II of the Access to Information and Protection of Privacy Act (Our File: TW/138/2017)

On November 3, 2017, the Department of Transportation and Works received your request for access to the following records:

Please provide any and all contracts/agreements/MOUs pertaining to the new long-term care facility in Corner Brook, particularly as they relate to the successful proponent, Corner Brook Care Partnership/Plenary Group. Please provide all documents via email to the address provided.

I am pleased to inform you that a decision has been made by the Deputy Minister of Transportation and Works to provide access to some of the requested information.

Access to the remaining records, and/or information contained within the records, has been refused in accordance with the following exceptions to disclosure, as specified in the Access to Information and Protection of Privacy Act (the Act):

Subsection 35(1)(d) – The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party.

Subsection 35(1)(f) – The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government of the province or a public body, or considerations which relate to those negotiations.

Subsection 35(1)(g) – The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose information, the disclosure of which could reasonably be expected to impair the ability of the public body to fulfill its mandate.

P.O. Box 8700, St. John’s, NL, Canada, A1B 4J6
of which could reasonably be expected to prejudice the financial or economic interest of the government of the province or a public body.

Subsection 40(1) – The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party’s personal privacy.

Although we have selected a preferred proponent we have not yet reached financial close with that team. This is part of the procurement process and we are currently still negotiating the final details of the agreement or the submissions received. Until we reach financial close, we are not able to disclose any information related to proposals as this may impact our ability to negotiate.

As required by 8(2) of the Act, we have severed information that is unable to be disclosed and have provided you with as much information as possible.

In accordance with your request for a copy of the records, the appropriate copies have been enclosed. Please be advised that you may appeal this decision and ask the Information and Privacy Commissioner to review the decision to provide partial access to the requested information, as set out in section 42 of the Act (a copy of this section of the Act has been enclosed for your reference). A request to the Commissioner must be made in writing within 15 business days of the date of this letter or within a longer period that may be allowed by the Commissioner. Your appeal should identify your concerns with the request and why you are submitting the appeal.

The appeal may be addressed to the Information and Privacy Commissioner as follows:

    Office of the Information and Privacy Commissioner
    2 Canada Drive
    P. O. Box 13004, Stn. A
    St. John’s, NL. A1B 3V8
    Telephone: (709) 729-6309
    Toll-Free: 1-877-729-6309
    Facsimile: (709) 729-6500

You may also appeal directly to the Supreme Court Trial Division within 15 business days after you receive the decision of the public body, pursuant to section 52 of the Act (a copy of this section of the Act has been enclosed for your reference).

Please be advised that responsive records will be published following a 72 hour period after the response is sent electronically to you or five business days in the case where records are mailed to you. It is the goal to have the responsive records posted to the Completed Access to Information Requests website within one business day following the applicable period of time. Please note that requests for personal information will not be posted online.

If you have any further questions, please contact me by telephone at (709) 729-5351 or by email at FrankWalsh@gov.nl.ca.
Sincerely,

[Signature]

Frank Walsh  
ATIPP Coordinator  
Department of Transportation and Works  
Enclosures
Disclosure harmful to the financial or economic interests of a public body

35. (1) The head of a public body may refuse to disclose to an applicant information which could reasonably be expected to disclose

(a) trade secrets of a public body or the government of the province;

(b) financial, commercial, scientific or technical information that belongs to a public body or to the government of the province and that has, or is reasonably likely to have, monetary value;

(c) plans that relate to the management of personnel of or the administration of a public body and that have not yet been implemented or made public;

(d) information, the disclosure of which could reasonably be expected to result in the premature disclosure of a proposal or project or in significant loss or gain to a third party;

(e) scientific or technical information obtained through research by an employee of a public body, the disclosure of which could reasonably be expected to deprive the employee of priority of publication;

(f) positions, plans, procedures, criteria or instructions developed for the purpose of contractual or other negotiations by or on behalf of the government of the province or a public body, or considerations which relate to those negotiations;

(g) information, the disclosure of which could reasonably be expected to prejudice the financial or economic interest of the government of the province or a public body; or

(h) information, the disclosure of which could reasonably be expected to be injurious to the ability of the government of the province to manage the economy of the province.

(2) The head of a public body shall not refuse to disclose under subsection (1) the results of product or environmental testing carried out by or for that public body, unless the testing was done

(a) for a fee as a service to a person or a group of persons other than the public body;

or

(b) for the purpose of developing methods of testing.
Disclosure harmful to personal privacy

40. (1) The head of a public body shall refuse to disclose personal information to an applicant where the disclosure would be an unreasonable invasion of a third party’s personal privacy.

(2) A disclosure of personal information is not an unreasonable invasion of a third party’s personal privacy where

(a) the applicant is the individual to whom the information relates;

(b) the third party to whom the information relates has, in writing, consented to or requested the disclosure;

(c) there are compelling circumstances affecting a person’s health or safety and notice of disclosure is given in the form appropriate in the circumstances to the third party to whom the information relates;

(d) an Act or regulation of the province or of Canada authorizes the disclosure;

(e) the disclosure is for a research or statistical purpose and is in accordance with section 70;

(f) the information is about a third party’s position, functions or remuneration as an officer, employee or member of a public body or as a member of a minister’s staff;

(g) the disclosure reveals financial and other details of a contract to supply goods or services to a public body;

(h) the disclosure reveals the opinions or views of a third party given in the course of performing services for a public body, except where they are given in respect of another individual;

(i) public access to the information is provided under the Financial Administration Act;

(j) the information is about expenses incurred by a third party while travelling at the expense of a public body;

(k) the disclosure reveals details of a licence, permit or a similar discretionary benefit granted to a third party by a public body, not including personal information supplied in support of the application for the benefit;

(l) the disclosure reveals details of a discretionary benefit of a financial nature granted to a third party by a public body, not including

(i) personal information that is supplied in support of the application for the benefit, or
(ii) personal information that relates to eligibility for income and employment support under the Income and Employment Support Act or to the determination of income or employment support levels; or

(m) the disclosure is not contrary to the public interest as described in subsection (3) and reveals only the following personal information about a third party:

(i) attendance at or participation in a public event or activity related to a public body, including a graduation ceremony, sporting event, cultural program or club, or field trip, or

(ii) receipt of an honour or award granted by or through a public body.

(3) The disclosure of personal information under paragraph (2)(m) is an unreasonable invasion of personal privacy where the third party whom the information is about has requested that the information not be disclosed.

(4) A disclosure of personal information is presumed to be an unreasonable invasion of a third party's personal privacy where

(a) the personal information relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation;

(b) the personal information is an identifiable part of a law enforcement record, except to the extent that the disclosure is necessary to dispose of the law enforcement matter or to continue an investigation;

(c) the personal information relates to employment or educational history;

(d) the personal information was collected on a tax return or gathered for the purpose of collecting a tax;

(e) the personal information consists of an individual's bank account information or credit card information;

(f) the personal information consists of personal recommendations or evaluations, character references or personnel evaluations;

(g) the personal information consists of the third party's name where

(i) it appears with other personal information about the third party, or

(ii) the disclosure of the name itself would reveal personal information about the third party; or

(h) the personal information indicates the third party's racial or ethnic origin or religious or political beliefs or associations.
(5) In determining under subsections (1) and (4) whether a disclosure of personal information constitutes an unreasonable invasion of a third party's personal privacy, the head of a public body shall consider all the relevant circumstances, including whether

(a) the disclosure is desirable for the purpose of subjecting the activities of the province or a public body to public scrutiny;

(b) the disclosure is likely to promote public health and safety or the protection of the environment;

(c) the personal information is relevant to a fair determination of the applicant's rights;

(d) the disclosure will assist in researching or validating the claims, disputes or grievances of aboriginal people;

(e) the third party will be exposed unfairly to financial or other harm;

(f) the personal information has been supplied in confidence;

(g) the personal information is likely to be inaccurate or unreliable;

(h) the disclosure may unfairly damage the reputation of a person referred to in the record requested by the applicant;

(i) the personal information was originally provided to the applicant; and

(j) the information is about a deceased person and, if so, whether the length of time the person has been deceased indicates the disclosure is not an unreasonable invasion of the deceased person's personal privacy.
Access or correction complaint

42. (1) A person who makes a request under this Act for access to a record or for correction of personal information may file a complaint with the commissioner respecting a decision, act or failure to act of the head of the public body that relates to the request.

(2) A complaint under subsection (1) shall be filed in writing not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act, or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) A third party informed under section 19 of a decision of the head of a public body to grant access to a record or part of a record in response to a request may file a complaint with the commissioner respecting that decision.

(4) A complaint under subsection (3) shall be filed in writing not later than 15 business days after the third party is informed of the decision of the head of the public body.

(5) The commissioner may allow a longer time period for the filing of a complaint under this section.

(6) A person or third party who has appealed directly to the Trial Division under subsection 52 (1) or 53 (1) shall not file a complaint with the commissioner.

(7) The commissioner shall refuse to investigate a complaint where an appeal has been commenced in the Trial Division.

(8) A complaint shall not be filed under this section with respect to

(a) a request that is disregarded under section 21;

(b) a decision respecting an extension of time under section 23;

(c) a variation of a procedure under section 24; or

(d) an estimate of costs or a decision not to waive a cost under section 26.

(9) The commissioner shall provide a copy of the complaint to the head of the public body concerned.
Direct appeal to Trial Division by an applicant

52. (1) Where an applicant has made a request to a public body for access to a record or correction of personal information and has not filed a complaint with the commissioner under section 42, the applicant may appeal the decision, act or failure to act of the head of the public body that relates to the request directly to the Trial Division.

(2) An appeal shall be commenced under subsection (1) not later than 15 business days

(a) after the applicant is notified of the decision of the head of the public body, or the date of the act or failure to act; or

(b) after the date the head of the public body is considered to have refused the request under subsection 16 (2).

(3) Where an applicant has filed a complaint with the commissioner under section 42 and the commissioner has refused to investigate the complaint, the applicant may commence an appeal in the Trial Division of the decision, act or failure to act of the head of the public body that relates to the request for access to a record or for correction of personal information.

(4) An appeal shall be commenced under subsection (3) not later than 15 business days after the applicant is notified of the commissioner’s refusal under subsection 45 (2).
November 3, 2017

Dear Mr. O'Connor:

Re: Corner Brook Long Term Care Project - Request for Proposals (RFP)

This letter is to advise that the Government of Newfoundland and Labrador ("GNL") and the Western Regional Health Authority ("WRHA", collectively with GNL, the "Authority") has completed the evaluation of the Proposals received in response to the Corner Brook Long Term Care Project RFP issued on June 5th, 2017 (the "RFP"). As a result, we are writing to advise that, subject to the terms of this letter, including completing or otherwise satisfying the matters set forth in Schedule A to this letter, Corner Brook Care Partnership ("CBCP") has been selected as the "Successful Proponent" in accordance with Section 8.1 of the RFP. The issues referenced in Schedule A may not be an exhaustive list, and the Authority reserves the right to raise other issues or concerns during the negotiation process. This letter shall constitute the Selection Notice for the purposes of the RFP.

The Authority looks forward to working towards Commercial Close and Financial Close with CBCP on this Project, and, in that regard, we confirm the following expectations relating to the next steps towards the implementation of the Project. For clarity, nothing herein shall limit, amend or derogate from CBCP's obligations or the Authority's rights (including, without limitation, the Authority's right to terminate discussions with CBCP if the Authority determines they are unlikely to reach a final agreement with CBCP) under the RFP.

Letter of Credit

In accordance with Section 8.3 of the RFP, CBCP shall provide, no later than five (5) Business Days after receipt of this Selection Notice, the Preferred Proponent Security by way of an irrevocable letter of credit (the "Letter of Credit") in the amount of $500,000.00 issued by any one of: Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, Royal Bank of Canada, Bank of Nova Scotia or Bank of Montreal, callable at the bank's counters in St. John's, Newfoundland and Labrador or Toronto, Ontario and in the form specified in Appendix F of the RFP. Please deliver the Letter of Credit to the attention of Daniel A. Ford at the offices of the Authority's legal counsel, Torys LLP, 79 Wellington St. W., 30th Floor, Box 270, TD South Tower, Toronto, Ontario, M5K 1N2. If CBCP does not
provide such Letter of Credit to the Authority by no later than five (5) Business Days after receipt of this Selection Notice, the Authority may exercise their rights as set out in the RFP, including those in Section 8.3 of the RFP.

Early Works Agreement

In accordance with Section 8.8 of the RFP, CBCP shall execute and deliver the Early Works Agreement to the Authority, no later than five (5) Business Days after receipt of this Selection Notice. Please note that Appendices B, C and D to the Early Works Agreement must be completed in a manner satisfactory to the Authority prior to its execution and delivery.

Commercial Close and Financial Close Stages

CBCP must execute the final Project Agreement subject only to revision in respect of those matters contemplated in Section 8.2 of the RFP, on or before December 13, 2017 (the “Commercial Close Target Date”).

Once CBCP has executed the Project Agreement, it will become Project Co, subject only to reaching Financial Close. If CBCP fails to execute the Project Agreement on or before the Commercial Close Target Date, the Authority may exercise its rights under the RFP, including the rights set out in Section 8 of the RFP. The Authority and CBCP will work together towards achieving Financial Close on or before the December 15, 2017.

Kick-Off Meeting

The Authority would like to arrange a kick-off meeting at Torys Offices as referenced above, on Wednesday, November 8 at 2:00 pm. Please provide the Authority with an agenda and list of proposed CBCP attendees no later than close of business Monday, November 6. A key item to be discussed at this meeting will be the selection and engagement of the Independent Certifier and the process to be followed in connection with that selection, all with a view to ensuring that the Independent Certifier is engaged, in accordance with Section 3 of Schedule 2 of the Project Agreement.

Confidential Information

Notwithstanding being named herein as the Successful Proponent, the obligations contained in the RFP, including those contained in Section 10.5 with respect to Confidential Information, continue to be in full force and effect and CBCP continues to be bound by such terms. For clarity, this letter and the information it contains shall be deemed to be Confidential Information, and accordingly CBCP shall not disclose the contents of same, or the fact that is has been issued, except in accordance with the requirements of Section 10.5 of the RFP, or until such time as the Authority have approved any such disclosure in writing.

Capitalized terms used but not defined in this Selection Notice shall have the respective meanings ascribed to them in the RFP.
Should you have any questions, please contact the undersigned at CBLTC@gov.nl.ca

Sincerely,

Cory Grandy
Assistant Deputy Minister

cc. Mr. Steve Johnston, Fairness Advisor
    Ms. Denise Tubrett, ADM
s. 35(1)(d), s. 35(1)(f), s. 35(1)(g)

Schedule A:
COR/2017/05529

Mr. Deron Bain
Concert Infrastructure Ltd.

November 3, 2017

Re: Corner Brook Long Term Care Project - Request for Proposals (RFP)

This letter is to advise that the Government of Newfoundland and Labrador (“GNL”) and the Western Regional Health Authority (“WRHA”, collectively with GNL, the “Authority”) has completed the evaluation of the Proposals received in response to the Corner Brook Long Term Care Project RFP issued on June 5th, 2017 (the “RFP”), and has selected a Preferred Proponent. As a result, please be advised that Infraworks has not been chosen as the Preferred Proponent. The Authority has selected Corner Brook Care Partnership as the Preferred Proponent, who will now be given the opportunity to achieve a final Project Agreement with the Authority. In accordance with Section 6.13 of the RFP, your Proposal is irrevocable and must remain in effect and open for acceptance until midnight at the end of the 120th day following the Submission Time for Financial Submissions.

In accordance with Section 8.6 of the RFP, upon Contract Execution and delivery by you to the Authority of written acknowledgement of (i) the disclaimers, limitations and waivers of liability and claims contained in the RFP, including Section 10.11 thereof, and (ii) the grant of Intellectual Property Rights to the Authority and waiver of moral rights pursuant to Section 6.9 thereof, the Authority will pay $150,000 (inclusive of any taxes payable) to you as partial compensation for your participation in the RFP process.

As described in Section 8.7 of the RFP, following the award and execution of the Project Agreement, the Authority will, upon your request and within forty (40) Business Days of Contract Execution, conduct a debriefing during which the relative strengths and weaknesses of your Proposal will be discussed with you. The Authority will not disclose or discuss any confidential information of another Proponent. Should you wish to schedule a debriefing please contact CBLTC@gov.nl.ca to arrange an appropriate time.

We remind you of your continuing obligations under the RFP, including your confidentiality obligations under Section 10.5 of the RFP, and this correspondence (and the subject matter hereof) constitutes Confidential Information within the meaning of Section 10.5 of the RFP. All capitalized terms in this letter that are not otherwise defined have the respective meanings given to them in the RFP.
On behalf of the Authority, I would like to thank you and all members of your team for participating in this Project.

Sincerely,

[Signature]

Cory Grandy
Assistant Deputy Minister

cc. Mr. Steve Johnston, Fairness Advisor
    Ms. Denise Tubrett, ADM
COR/2017/05531

Mr. Kirk Fisher
Lark Group
kirkfisher@larkgroup.com

November 3, 2017

Dear Mr. Fisher,

Re: Corner Brook Long Term Care Project - Request for Proposals (RFP)

This letter is to advise that the Government of Newfoundland and Labrador ("GNL") and the Western Regional Health Authority ("WRHA", collectively with GNL, the "Authority") has completed the evaluation of the Proposals received in response to the Corner Brook Long Term Care Project RFP issued on June 5th, 2017 (the "RFP"), and has selected a Preferred Proponent. As a result, please be advised that Lark Group has not been chosen as the Preferred Proponent. The Authority has selected Corner Brook Care Partnership as the Preferred Proponent, who will now be given the opportunity to achieve a final Project Agreement with the Authority. In accordance with Section 6.13 of the RFP, your Proposal is irrevocable and must remain in effect and open for acceptance until midnight at the end of the 120th day following the Submission Time for Financial Submissions.

In accordance with Section 8.6 of the RFP, upon Contract Execution and delivery by you to the Authority of written acknowledgement of (i) the disclaimers, limitations and waivers of liability and claims contained in the RFP, including Section 10.11 thereof, and (ii) the grant of Intellectual Property Rights to the Authority and waiver of moral rights pursuant to Section 6.9 thereof, the Authority will pay $150,000 (inclusive of any taxes payable) to you as partial compensation for your participation in the RFP process.

As described in Section 8.7 of the RFP, following the award and execution of the Project Agreement, the Authority will, upon your request and within forty (40) Business Days of Contract Execution, conduct a debriefing during which the relative strengths and weaknesses of your Proposal will be discussed with you. The Authority will not disclose or discuss any confidential information of another Proponent. Should you wish to schedule a debriefing please contact CBLTC@gov.nl.ca to arrange an appropriate time.

You are reminded of your continuing obligations under the RFP, including your confidentiality obligations under Section 10.5 of the RFP, and this correspondence (and the subject matter hereof) constitutes Confidential Information within the meaning of Section 10.5 of the RFP. All capitalized terms in this letter that are not otherwise defined have the respective meanings given to them in the RFP.
On behalf of the Authority, I would like to thank you and all members of your team for participating in this Project.

Sincerely,

[Signature]

Cory Grandy
Assistant Deputy Minister

cc. Mr. Steve Johnston, Fairness Advisor
    Ms. Denise Tubrett, ADM